

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS**

**RONALD MARK CLARK and
MARGARET KELLY CLARK,
Individually and as Next Friends and
Guardians of FORREST MANNING, a
Minor**

PLAINTIFFS

v.

CASE NO.: 4-07-CV-00477 SWW

**JOHN BAKA, M.D. AND JOHN V.
BAKA, M.D., P.A.**

DEFENDANTS

DEFENDANTS' MOTION FOR COSTS

Come Defendants, Dr. John Baka and John V. Baka, M.D., P.A., and for their Motion for Costs, state as follows:

1. The parties tried this case to a twelve person jury from February 1, 2011 to February 18, 2011 before the Honorable D. P. Marshall. After deliberations on February 17 and February 18, 2011, the jury returned a verdict in favor of Dr. John Baka on February 18, 2011. On February 25, 2011, the Court entered Judgment on the jury's verdict for Dr. John Baka and John V. Baka, M.D., P.A., and against Ronald Mark Clark and Margaret Kelly Clark, as next friends and guardians of Forrest Manning, a minor. *See Judgment* attached hereto as Exhibit "A". The Court's Judgment provides that the Defendants are entitled to costs as the Court may later allow on motion. *Id.*

2. Taxation of costs is authorized by 28 U.S.C.A. § 1920 and governed by Rule 54(d) of the Federal Rules of Civil Procedure. The Defendants may be awarded costs for (1) fees of the clerk and marshall, (2) fees for printed or electronically records transcripts necessarily obtained for use in the case, (3) fees and disbursements for printing and witnesses, and (4) fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case. 28 U.S.C.A. § 1920. Unless a federal statute, these

rules, or a court order provides otherwise, costs (other than attorneys' fees) should be allowed to the prevailing party. Fed. R. Civ. P. 54(d). The prevailing party is presumptively entitled to recover all of its costs. *See Thompson v. Wal-Mart Stores, Inc.*, 472 F.3d 515, 517 (8th Cir. 2006).

3. A prevailing party is allowed to recover his deposition costs for the depositions that were either used at trial or were reasonably necessary for this case. *Smith v. Tenet Healthsystem SL, Inc.*, 436 F.3d 879 (8th Cir. 2006). The Defendants, the prevailing parties at the trial of this case, have incurred costs in this case in the amount of \$15,969.89 for depositions that were either used at trial or were reasonably necessary for this case, including fees for the attendance of court reporters, transcript costs, and video deposition costs. Copies of the invoices related to these depositions costs are attached hereto as Exhibit "B".

4. A prevailing party is allowed to recover his costs for the copying of the exhibits that the Defendants entered into evidence at the trial of this case. *Fields v. Shelter Insurance Company*, 2007 WL 1702512 (E.D. Ark.). Costs relating to demonstrative aids are also recoverable. *Cefalu v. Vill. Of Elk Grove*, 211 F.3d 416 (7th Cir. 2000). The Defendants, the prevailing parties at the trial of this case, have incurred costs in the amount of \$1,744.79 for copying of the exhibits they entered into evidence at the trial of this case. A copy of the invoice related to these copying costs is attached hereto as Exhibit "C". The Defendants have also incurred costs in the amount of \$1,601.75 for the demonstrative aids that were used at the trial of this case. A copy of the invoice relating to the demonstrative aids is attached hereto as Exhibit "D".

5. The Defendants have incurred total costs in the amount of \$19,316.63, costs that should be available to the Defendants as prevailing parties at the trial of this case. These costs are also detailed in the Bill of Costs filed simultaneously with this Motion.

6. For the above reasons, and those provided in the Brief in Support of this Motion and the Bill of Costs filed simultaneously with this Motion, the Defendants respectfully request that costs in the amount of \$19,316.63 be awarded in favor of the Defendants, Dr. John Baka and John V. Baka, M.D., P.A., and against the Plaintiffs, Ronald Mark Clark and Margaret Kelly Clark, as next friends and guardians of Forrest Manning, a minor, and for all other relief to which they are entitled.

WHEREFORE, Defendants, Dr. John Baka and John V. Baka, M.D., P.A., respectfully request that the Court grant their Motion for Costs, that costs in the amount of \$19,316.63 be awarded in favor of the Defendants, Dr. John Baka and John V. Baka, M.D., P.A., and against the Plaintiffs, Ronald Mark Clark and Margaret Kelly Clark, as next friends and guardians of Forrest Manning, a minor, and for all other relief to which they are entitled.

Respectfully submitted,

MALCOM LAW FIRM
2226 Cottondale Lane, Suite 100
Little Rock, Arkansas 72202-2060
(501) 319-7669 Telephone
(501) 319-7681 Facsimile

ATTORNEYS FOR DEFENDANTS
JOHN BAKA, M.D. AND
JOHN V. BAKA, M.D., P.A.

By: /s/ Phil Malcom
Phil Malcom (ABA # 75082)
pmalcom@malcomlawfirm.com

CERTIFICATE OF SERVICE

I, Phil Malcom, do hereby certify that a true and correct copy of the foregoing pleading has been electronically filed with the Clerk of Court using the CM/ECF system this 11th day of March, 2011, which shall send notification of such filing to the following:

Mr. Les Weisbrod
MILLER CURTIS & WEISBROD, LLP
11551 Forest Central Drive, Suite 300
Dallas, Texas 75243
LWeisbrod@MCWLawfirm.com

Mr. Max Freeman
MILLER CURTIS & WEISBROD, LLP
11551 Forest Central Drive, Suite 300
Dallas, Texas 75243
MFreeman@MCWLawfirm.com

Mr. Morgan Welch
WELCH, BREWER & HUDSON
One Riverfront Place, Suite 413
North Little Rock, Arkansas 72114
mwelch@wbhlawfirm.com

/s/ Phil Malcom

Phil Malcom